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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,771	10/23/2002	David J. Stevens	D-43368-01	9664
	7590 02/22/2005		EXAMINER	
Cryovac Inc PO Box 464 Duncan, SC 29334			SIPOS, JOHN	
			ART UNIT	PAPER NUMBER
			3721	
DATE MAILED: 02/22/2005				

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FEB 22 2005
GROUP 3700

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/070,771
Filing Date: October 23, 2002
Appellant(s): STEVENS, DAVID J.

Mark. B. Quatt
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed February 3, 2005.

(1) *Real Party in Interest*

A statement identifying the real party in interest is contained in the brief.

(2) *Related Appeals and Interferences*

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct. It should be noted that the two aspects of the invention under the "Summary" heading on page 8 of the Brief are claims 1 and 7, respectively.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(8) *Claims Appealed*

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) *Prior Art of Record*

2,757,495	Reichel	8-1956
4,640,081	Kawaguchi	2-1987
3,592,372	james	7-1971

4,289,560	Simmons	9-1981
4,601,159	Mugnai	7-1986
4,381,637	Ballestrazzi	5-1983
4,947,623	Saito	8-1990
4,813,208	Piltz	3-1989
4,627,221	Buchner	12-1986
3,342,657	Dyer	9-1967

(10) Argument

I. Rejection based on Reichel

Appellant's arguments regarding claims 1 and 7 are that the basic reference to Reichel does not incorporate by reference the patent to Conti (2,686,128) and therefore Reichel does not teach the longitudinal heat sealing of the packaging material. Appellant further argues that even if Conti is incorporated by reference into Reichel it uses an adhesive and not heat sealing to longitudinally seal the packaging material.

Regarding the first argument, Reichel specifically lists in column 5, line 74 to column 6, line 6 a number of different patents, including the Conti reference, stating that the "tube-forming system shown may be replaced by any of the systems disclosed" in any one of these patents. It is the Examiner's position that by this statement Reichel considers the structure of Conti as part of its disclosure.

Regarding the second argument, the Examiner maintains that the instant claims read on the Reichel/Conti disclosure. In the Conti system, the film material is longitudinally sealed with an adhesive on the packaging material and wherein the

adhesive "is more rapidly cured by exposure to a heat coil" (quoting Appellant's Brief) or to a heated roller 24. The sealing of the longitudinal edges of the packaging material by the Reichel/Conti mechanism is equivalent to the sealing of the longitudinal edges of the packaging material by the claimed structure in that both use a material that upon the application of heat. The heating roller 24 or heated element 28 of Reichel/Conti is considered to be equivalent to the heating rollers 22/94 of the instant application. In both instances heat is applied to the material edges that are in engagement with each other to soften the material sufficiently to have the edges adhere to each other.

II. Rejection based on Saito

Appellant's argues that the secondary references to Piltz, Buchner and Dyer do not teach the forming of the flat packaging material around the products being fed.

The Examiner maintains that these references were not applied against the claims to teach the forming of the material around the products. That concept is taught by the basic reference to Saito wherein the flat sheet is fed from a supply roll 3b, wrapped around a line of products B, the edges of the sheet are longitudinally heat sealed by rollers g1 and g2 and finally the material is transversally sealed by sealers 4 to form packages. The secondary references were used to show the well-known concept of forming a flat packaging material from a tube that is longitudinally slit and unfolded to form the substantially flat condition of the material prior to its use in a packaging machine. With this operation the secondary references show the formation of a flat tube that the Saito process requires and eliminating the intermediate step of

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storing the flat material on a roll. By forming the tube the interior of the material is kept in a closed state maintaining interior clean. It would have been obvious to one skilled in the art to form the flat material of Saito from a tube as shown by any of the secondary references to maintain the interior clean and to eliminate the intermediate step of winding the material on a storage roll.

III. Rejection of dependent claims

Since Appellant relies on patentability of the dependent claims on comments made regarding the independent claims and since other arguments are not made, no response is necessary regarding the dependent claims.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


John Sipos
Primary Examiner
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February 17, 2005

Conferees
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